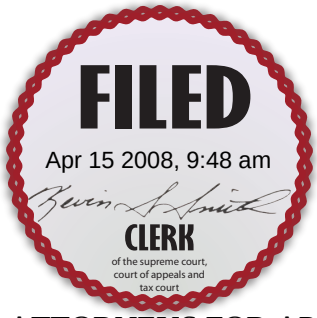

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IN THE
COURT OF APPEALS OF INDIANA

JOHN WILLIS WILLIAMS III,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0712-CR-558
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0610-FB-205

April 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John Willis Williams III was convicted of burglary[1] as a Class B felony after a jury trial and sentenced to ten years in the Department of Correction. He appeals raising the following two issues:

I. Whether his conviction was supported by sufficient evidence; and

II. Whether his sentence was appropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 5, 2006, sixteen-year-old A.H. returned home from school around 10:40 a.m. to his family residence in Fort Wayne, Indiana. The residence is owned by A.H.'s mother Kristina Harris. A.H. parked his vehicle in the driveway, approached the garage door on foot, and entered the garage door code into the keypad. As the garage door opened, A.H. saw a black male, later identified to be Williams, run from the house, through the garage, and out the service door, the glass of which had been broken. Williams was wearing a blue and yellow jacket, which reminded A.H. of an Indiana Pacer's jacket.

At about the same time, A.H.'s next-door neighbor, Trent Goldman, walked into his back yard to let his dogs outside. The two dogs immediately ran to A.H.'s back yard from which three black males were running. One of the men was wearing a blue and yellow jacket, which Goldman thought looked like a Pacer's or Michigan jacket. The three men ran around the vacant house directly behind A.H.'s house and got into a black SUV that was parked in the driveway of the vacant house. The SUV squealed out of the driveway and

[1] *See* IC 35-43-2-1.

drove quickly down the street. Goldman called Fort Wayne dispatch directly from his cell phone.

As Goldman was on the phone, A.H. drove around in his vehicle and spoke to Goldman about the burglary. Corporal Robert Heffner with the Allen County Sheriff's Department, who was off duty on that day, was returning home to the neighborhood when he was flagged down by Goldman. Knowing that the SUV would have to return to the intersection where he was located in order to exit the neighborhood, Corporal Heffner turned his marked police vehicle around about the same time that the SUV approached. Goldman identified the SUV, and Corporal Heffner stopped it. The driver of the SUV, Williams, was wearing a blue and yellow jacket. A.H. identified Williams as the person he saw running from his house and out the back door. Goldman identified Williams as one of the three men he observed running from A.H.'s back yard.

When A.H.'s home was investigated, the following was discovered: pry marks on the sliding glass door; a window screen had been removed from a bedroom window; pry marks on the garage service door; and the glass of the garage service door had been shattered from the outside. A.H.'s PSP, a small, handheld video game system, which had been on the kitchen table when A.H. left for school, was discovered on the ground outside of the fence in the back yard of A.H.'s house. A black jacket, found in the SUV driven by Williams, contained a shard of broken glass in the pocket.

On October 12, 2006, the State charged Williams with Class B felony burglary. A jury trial was held on June 12 and 13, 2007, at which Williams presented evidence that he was looking at the vacant house behind A.H.'s as a potential buyer when he was chased to

the SUV by Goldman's dogs. *Tr*. at 268-72. The jury convicted Williams of Class B felony burglary, and the trial court sentenced him to ten years, finding Williams's criminal history as an aggravating circumstance. Williams now appeals.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id*.; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Williams argues that the evidence presented at trial was insufficient to support his conviction for burglary. He specifically contends that A.H.'s identification at trial of him as the man who fled the house was inconsistent with A.H.'s previous deposition testimony and that no physical evidence connected him to the burglary. Additionally, Williams claims that there was a legitimate reason for him being in the neighborhood, as he was looking at the vacant home behind A.H.'s house as a potential buyer and was chased back to the SUV by Goldman's dogs.

The evidence presented at trial showed that A.H. testified that, as the garage door opened, he saw Williams run from inside his home, through the garage, and out the service door into the back yard. *Tr*. at 95, 97. A.H. saw William's face when Williams glanced at

A.H. as he ran through the garage. Minutes later, after Williams had been stopped by Corporal Heffner, A.H. identified him as the man who ran from inside his house. A.H. also testified that the man he saw running from his home was wearing a blue and yellow jacket, and Williams was wearing the same colored jacket when he was stopped. Additionally, Goldman observed three males running from A.H.'s back yard, one of which was wearing a blue and yellow jacket. We conclude that sufficient evidence was presented to support Williams's conviction for burglary.

To the extent that Williams argues an innocuous reason for being near A.H.'s home on the day of the burglary, this is merely an invitation to reweigh the evidence, which we cannot do. *Williams*, 873 N.E.2d at 147. Williams's additional arguments concerning inconsistencies in A.H.'s identification and the lack of physical evidence are also to no avail. "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007).

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a

constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Williams argues that his sentence was inappropriate in light of the nature of the offense and his character. He contends that his limited criminal history and the facts that he held two jobs, never violated probation, and attended a Christian group should have led the trial court to order a lesser sentence. He believes that the statutory minimum of six years would be more appropriate. We disagree.

As to the nature of the offense, although Williams's crime was not a particularly egregious burglary, he did make three attempts to break into A.H.'s home and damaged two door frames before breaking the glass in the garage service door to gain entry. Additionally, had it not been for A.H.'s return home, Williams would have had more opportunity to cause property loss to A.H. and his family. As to the character of the offender, the evidence showed that Williams had a criminal history that consisted of a misdemeanor conviction for minor in possession of alcohol, a misdemeanor conviction for minor consuming alcohol, and a Class B felony conviction for robbery. Additionally, although Williams argues that he has never violated probation, he was on probation for his robbery conviction at the time of the instant offense and, therefore, violated his probation by committing a new offense. Williams was sentenced to ten years, the advisory sentence for a Class B felony, and faced a maximum of twenty years. We do not believe that his sentence was inappropriate in light of the nature of the offense and Williams's character.

Affirmed.

RILEY, J., and MAY, J., concur.